## CIVIL RIGHTS COMMISSION STATE OF HAWAII

In the Matter of	DR 93-009
Respondents.	

## DISSENT BY COMMISSIONER DAPHNE E. BARBEE-WOOTEN

The legislative purpose of Section 378-2(1)(A), HRS, (Discriminatory practices made unlawful), is to prohibit discrimination in employment based upon several protected bases. The statute states, in pertinent part, that, "[i]t shall be an unlawful discriminatory practice [b]ecause of . . . arrest and court record [f]or any employer to refuse to hire or employ or bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment; . . . "

In the instant petition for declaratory relief, it is alleged that a woman was terminated by her employer because of her husband's arrest and court record. I disagree with the other Civil Rights Commissioners who feel that since she was terminated because of her husband's arrest and court record, her complaint should be

dismissed.

The majority of the Commissioners believe that the statute cannot be interpreted to protect Jane Doe from discrimination. I disagree. If the employer's actions against an employee violate the spirit and purpose of section 378-2(1)(A), HRS, which is to prevent discrimination on the basis of arrest and court record, then the complaint should be accepted for processing. The Legislature felt that eliminating discrimination on this basis was important enough to be specifically included as an Unlawful Discriminatory Practice. To disallow the complaint would be contrary to the legislative intent and purpose of Section 378-2(1)(A), HRS.

I strongly feel that the employer's actions and reasons for the actions should be considered in determining whether the complaint should be dismissed outright, or investigated and processed through the Civil Rights Commission. By analogy, if a person was fired for being married to someone of a different racial or religious background than the employer, this is still discrimination on the basis of race or religion. It is the "root animus" for the unlawful action which should be considered, as this "root animus" is the evil which the statute seeks to eliminate.

It is unfair that a person who is terminated just for being married to someone with an arrest and court record has no protection under the law, while a person with an arrest and court record is entitled to file a complaint, even though both are subjected to the same unlawful treatment which the statute

prohibits, i.e. being discharged because of an arrest and court record.

Therefore, I would allow the complaint to proceed through the investigative and administrative process in the Civil Rights Commission.

DATED: Honolulu, Hawaii 3-3/

Franky-Was

DARHNE E. BARBEE-WOOTI

Commissioner

FINAL ORDER ADOPTING IN PART THE HEARINGS EXAMINER'S RECOMMENDED ORDER/In the Matter of \_\_\_\_\_\_\_, Petitioners, LINDA C. TSEU, as Executive Director of the Hawaii Civil Rights Commission; JANE DOE, Complainant, Respondents.